The defendant W. B. Shute having removed the suit, what was the effect of such removal upon the other defendants?

The language of the act is, "may remove said suit." The suit in this case is against the defendants jointly, and is an entirety, a single cause of action, and if the suit be removed, no part of it remains in the court from whence the removal was made; but a subsequent section of the act, after providing for the steps which must be taken by any one of the defendants entitled to remove the suit, to wit, the filing of the petition, and bond, says, "it shall be the duty of the state court to accept said petition and bond, and proceed no further in such suit," the suit having been removed to the Circuit Court. Such court obtains full jurisdiction of the entire subject-matter, and of all the parties thereto, and can fully determine the controversy between all the parties to the suit; to give the construction contended for by the plaintiff would divide the suit, placing a part of it to be tried in one court, subject to its rulings and decisions in the trial, and a part of it in another court, whose rulings and decisions might be entirely at variance, and increasing greatly the costs and expenses of the litigation; this would be contrary to judicial policy, and such a construction as could not have been contemplated by the makers of the law. In the judgment of the court, therefore, the entire suit was upon the petition of defendant Shute removed into this court, and it was not necessary to such removal that the other defendants should have joined in the petition for removal. The motion to remand is therefore overruled.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF ILLINOIS.[2]
SUPREME JUDICIAL COURT OF MAINE.[3]
COURT OF APPEALS OF MARYLAND.[4]
SUPREME COURT OF PENNSYLVANIA.[5]
SUPREME COURT OF VERMONT.[6]

AGENT.

Representations in course of Business—Bank Officers.—In a suit by

[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1876. The cases will probably be reported in 3 or 4 Otto.

[2] From Hon. N. L. Freeman, Reporter; to appear in 71 Illinois Reports.

[3] From J. D. Pulsifer, Esq., Reporter; to appear in 65 Maine Reports.

[4] From J. Shaaf Stockett, Esq., Reporter; to appear in 43 Maryland Reports.

[5] From P. F. Smith, Esq., Reporter; to appear in 80 Penna. St. Reports.

[6] From Hon. J. W. Rowell, Reporter; to appear in 48 Vermont Reports.

a bank against endorsers of a note discounted for the accommodation of the drawer, the affidavit of defence was that "at and before the time that defendants endorsed the note," they inquired of the cashier and one of the directors of the bank whether it would be safe for them to endorse, and that these officers informed them that they considered the drawer perfectly good, and that they would be safe in endorsing; that the officers knew the representations to be false, and that they made them to deceive defendants; that defendants would not have endorsed but for the representations. *Held* to be insufficient: *Mapes* v. *Second Nat. Bank of Titusville*, 80 Penna.

Such declarations, although wilfully false, made by the officers, not in the course of their duties as officers, or agents of the bank, could not affect the bank: *Id.*

ALLUVION. See *Waters and Watercourses.*

ARBITRATION.

Essentials of Award—Matters submitted.—It is essential to the validity of an award, that the arbitrator award upon all the subjects embraced in the submission that are heard by him, and upon which his judgment is required; but, where the submission, in terms, comprehends all matters in difference, it is competent for the parties on the hearing, to submit to the arbitrator just such matters as they elect, and his award upon such matters is conclusive: *Young* v. *Kinney*, 48 Vt.

Every reasonable intendment is to be made in favor of an award; and in order to impeach an award on the ground that part only of the matters submitted was awarded upon, it must be distinctly shown that the matters not awarded upon were so brought to the notice of the arbitrator that it became his duty to hear and determine them: *Id.*

Award must be unanimous, unless otherwise provided in the submission —Effect of a dissension among Arbitrators.—Where matters of dispute are submitted to arbitration, the award to be binding must be concurred in by all of the arbitrators, unless it be otherwise provided in the submission: *Harryman* v. *Harryman*, 43 Md.

Where, from a dissension among arbitrators, the award fails, the reference is at an end unless renewed by agreement of the parties, and the court has no power, unless given by statute or the agreement of the parties, to appoint new arbitrators; and ordinarily it has no power to refer the matter back to the same arbitrators, after setting aside their award, unless such power be one of the terms of the submission: *Id.*

A clause in a submission to arbitrators providing that "in the event of either of the parties disputing the validity of the award, or moving the court to set it, or any part of it, aside, the court shall have power to remit the matters referred, or any of them, to the reconsideration and determination of the arbitrators making such award," is unavailing, where the arbitrators do not agree, as it would be utterly futile to remit the matters of reference to the same arbitrators, when it is apparent that they do not agree and that the reference must ultimately fail: *Id.*

ASSUMPSIT. See *Deed.*

Officers of Corporation not entitled to Compensation.—There is no implied assumpsit that the president and directors of a railway company, occupying the position of trustees of the funds and property of the

company, shall be entitled to any compensation for their ordinary services as such officers, unless the salary is fixed by the by-laws or a resolution of the board, before the services are performed: *Gridley* v. *L. B. & M. Railway Co.*, 71 Ill.

Damages for price of Goods sold under Special Contract.—No principle involved in the action of assumpsit is sustained by a greater force of authority, than that where there has been a special contract, the whole of which has been executed on the part of the plaintiff, and the time of payment on the other side has passed, a suit may either be brought on the special contract, or a general assumpsit may be maintained; and in the latter case the measure of damages will be the rate of recompense fixed by the special contract: *Appleman* v. *Michael*, 43 Md.

ATTORNEY. See *Judgment.*

Statute of Limitations—Recovery for Services by Attorney.—An attorney's employment in a suit is continuous, and the Statute of Limitations does not begin to run upon his charges therein till the suit is ended, or his employment otherwise terminated: *Davis* v. *Smith*, 48 Vt.

While plaintiff was defendant's solicitor in prosecuting a foreclosure suit against P., he purchased P.'s equity of redemption in the premises for his own benefit, and brought a bill to redeem against defendant, wherein it was decided that inasmuch as plaintiff was defendant's solicitor at the time of the purchase, defendant was entitled to the benefit thereof. *Held*, that plaintiff was, nevertheless, entitled to recover for services rendered in the foreclosure suit prior to his purchase, but not for services in making the purchase: *Id.*

BANK. See *Agent.*

BANKRUPTCY. See *Courts; Landlord and Tenant.*

BILLS AND NOTES.

Given for Patent Right.—A negotiable promissory note given for a patent right without the words, "given for a patent right," inserted therein as required by No. 68, sect. 2, of Acts of 1870, is good in the hands of a *bonâ fide* holder for value, who takes it before maturity and without notice of what it was given for: *Pendar* v. *Kelley*, 48 Vt.

Warranty of Genuineness.—It is a general if not uniform rule that a person passing bank bills, or commercial paper, or making sale of a chose in action, guarantees or warrants the genuineness of the instrument, and this whether he does so in terms, or is silent when the transfer is made: *Tyler* v. *Bailey*, 71 Ill.

Fraud and Circumvention.—Although the execution of a promissory note may be procured as to a surety by the fraud of the principal maker, if the payee is an innocent party, and has no knowledge of the facts, and is not privy to the fraud, this will afford no defence against the note: *Anderson* v. *Warne*, 71 Ill.

CHATTEL MORTGAGE.

Pledge of personal Property as Security—Equity of Redemption.—A bill of sale whereby a debtor conveys personal property to his creditor

as *security*, and which provides that the property shall remain in the debtor's possession, and he have thirty days to redeem by paying the debt, is a mortgage. *Blodgett* v. *Blodgett*, 48 Vt.

A mortgagor of personal property, after condition broken, has an equity of redemption that may be asserted if he brings his bill to redeem within a reasonable time: *Id.*

A tender of the amount of the debt after the law day has passed, unaccepted, does not divest the mortgagee of his legal title to the property mortgaged; and chancery has jurisdiction to decree redemption. *Id.*

When the mortgagee disposes of the property after tender made and before final hearing, so that an order for its redelivery cannot be made, a decree may be entered for the amount of the mortgagor's interest therein: *Id.*

Constitutional Law.

Regulation of Commerce—Agreement between States before the adoption of the Constitution.—The compact between South Carolina and Georgia made in 1787, by which it was agreed that the boundary between the two states should be the northern branch or stream of the Savannah river, and that the navigation of the river along a specified channel should for ever be equally free to the citizens of both states, and exempt from hindrance, interruption or molestation attempted to be enforced by one state on the citizens of another, has no effect upon the subsequent constitutional provision that Congress shall have power to regulate commerce with foreign nations, and among the several states: *State of South Carolina* v. *State of Georgia, Alphonso Taft, Secretary of War of the United States et al.*, S. C. U. S., Oct. Term 1876.

Congress has the same power over the Savannah river that it has over the other navigable waters of the United States: *Id.*

The right to regulate commerce includes the right to regulate navigation, and hence to regulate and improve navigable rivers and ports on such rivers, and for this purpose to close one of several channels in a navigable stream, if, in its judgment, thereby the navigation of the river will be improved. It may declare that an actual obstruction is not, in the view of the law, an illegal one: *Id.*

An appropriation for the improvement of a harbor on a navigable river "to be expended under the direction of the secretary of war," confers upon that officer the discretion to determine the mode of improvement, and authorizes his diversion of the water from one channel into another, if, in his judgment, such is the best mode: *Id.*

Such a diversion is not giving preference to the ports of one state over those of another: *Id.*

Quære: Whether a state suing for the prevention of a nuisance in a navigable river, which is one of its boundaries, must not aver and show that she sustains some special and peculiar injury thereby, such as would enable a private person to maintain a similar action: *Id.*

Contract

For future delivery as distinguished from Wager.—A contract for the sale and purchase of wheat to be delivered in good faith at a future time is not void as a "wagering contract," but when under such an agreement it is understood by the parties that no wheat is to be delivered, but only a payment at the time appointed of the difference between the contract

and the market price, it thus becomes a wagering contract and the law will not enforce it: *Rumsey* v. *Berry*, 65 Me.

The plaintiffs in good faith at the request and for the benefit of the defendant made an agreement for the sale of wheat to be delivered within a certain time at the option of the defendant, he to furnish sufficient "margin" to secure them against loss. The defendant failed to comply with his part of the contract, and a loss ensued. *Held*, that under such a contract the law will give to the plaintiffs a remedy for their loss: *Id.*

CORPORATION. See *Assumpsit.*

Agreement to take Shares.—A written agreement to take and secure a certain number of shares in an insurance company before its organization is a proposal to take that number of shares, and does not make the subscribers thereto stockholders in such company, unless such proposal has been accepted by said company after it has been organized: *Starratt* v. *Rockland Fire and Marine Ins. Co.*, 65 Me.

The return of the name of such a subscriber to the secretary of state, as a stockholder, by the secretary of the company, under a mistake of fact, and the entry of it upon the stock ledger, do not constitute an acceptance of his proposal: *Id.*

Such acts of the secretary are open to explanation and control by parol proof that they were committed under a mistake of fact in respect to any particular person whose name has been thus returned and entered: *Id.*

COUNTIES.

Not liable for Negligence.—The general rule of law, that the superior or employer must answer civilly for the negligence or want of skill of his agent or servant in the course or line of his employment, by which another is injured, does not apply to counties. They stand on a different footing, in this respect, from individuals and private corporations, and from municipal corporations proper, such as cities and towns, acting under charters or incorporating statutes: *Symonds* v. *Clay Co.*, 71 Ill.

COURTS.

Bankruptcy—Jurisdiction of State Courts under United States Laws.—Under the Bankrupt Act of 1867 the assignee might sue in the state courts to recover the assets of the bankrupt, no exclusive jurisdiction being given to the courts of the United States. Whether such exclusive jurisdiction is given by the Revised Statutes, *quære: Claflin* v. *Houseman, Assignee*, S. C. U. S., Oct. Term 1876.

The laws of the United States are as much the law of the land in any state as state laws are; and although, in their enforcement, exclusive jurisdiction may be given to the Federal courts, yet where such exclusive jurisdiction is not given, or necessarily implied, the state courts, having competent jurisdiction in other respects, may be resorted to: *Id.*

In such cases, the state courts do not exercise a new jurisdiction conferred upon them, but their ordinary jurisdiction derived from their constitution under the state laws: *Id.*

COVENANT.

Forfeiture—Equity—Time.—Brady leased to Lambing a lot of land, to have the sole right to bore for oil, &c., for twenty years, Lambing to

commence operations in sixty days and continue with due diligence; if he should cease operations twenty days for any one time, Brady might resume possession. There were other covenants in the lease, and it was then stipulated that a failure of Lambing to comply with any one of the conditions should work a forfeiture, and Brady might enter and dispose of the premises as if the lease had not been made. It was further agreed that if Lambing did not commence operations at the time specified, he should pay Brady $30 per month until he should commence: *Held*, that the covenant of forfeiture was modified, not abrogated, by the clause for payment of rent: *Brown* v. *Vandegrift*, 80 Penna.

Lambing did not commence operations; he paid four months' rent; he omitted payment for eleven months and then tendered the amount for that time: *Held*, that the lessor might refuse the tender and insist on the forfeiture. In such case time is of the essence of the contract, and equity follows the law and will enforce the covenant of forfeiture as essential to do justice: *Id.*

Equity abhors a forfeiture when it works a loss that is contrary to equity, not when it works equity and protects the lessor against the laches of the lessee: *Id.*

DAMAGES. See *Assumpsit.*

Continuing Nuisance or Trespass.—The measure of damages for a continuing nuisance, or a continuing trespass, for which successive actions may be maintained till the wrongdoer is compelled to remove the nuisance or discontinue the trespass, is the loss sustained at the date of the plaintiff's writ and for which a recovery has not already been had, and not the diminution in the value of the estate: *Cumberland and Oxford Canal Co.* v. *Hitchings*, 65 Me.

When one wrongfully places an obstruction upon the land of another, he is under a legal obligation to remove it, and successive actions may be maintained until he is compelled to remove it: *Id.*

The filling up of a canal wrongfully is a trespass for which successive actions may be maintained till the obstruction is removed: *Id.*

DEED. See *Waters and Watercourses.*

Acknowledgment of Consideration not an Estoppel—Assumpsit.—The acknowledgment by the grantor of the receipt of the consideration of a deed is not a conclusive estoppel that it has been so received: *Barter* v. *Greenleaf*, 65 Me.

When a promise of payment or some other contract or thing to be done has been relied upon as the consideration of a deed and the grantee refuses to pay or perform, the grantor may recover the value of his property as upon an implied assumpsit: *Id.*

EMINENT DOMAIN.

Public Use.—Province of Judiciary.—Courts have the right to determine whether the use of private property proposed to be taken and appropriated to, is public in its nature or not; but when the use is public, the judiciary cannot inquire into the necessity or propriety of exercising the right of eminent domain; that right is political in its nature and to determine when it shall be exercised belongs exclusively to the legislative branch of the government: *C., R. O. & P. Railroad Co.* v. *Town of Lake*, 71 Ill.

EQUITY.

Mistake.—A mistake of fact to warrant a court of equity in granting relief must be material, and such as controlled the action of the party. It will not suffice if it be merely incidental nor the result of negligence, nor will the party be permitted to sleep on his discovery of it: *Grymes* v. *Sanders, Adm'r, et al.*, S. C. U. S., Oct. Term 1876.

ERRORS AND APPEALS.

Practice—Parties—Estoppel—Waiver.—Where an appellant obtains an order of severance in the court below, and does not make parties to his appeal some who were parties below, and who are interested in maintaining the decree, he cannot ask its reversal here on any matter which will injuriously affect their interests: *Terry* v. *Merchants' and Planters' Bank*, S. C. U. S., Oct. Term 1876.

When an appellant seeks to reverse a decree because too large an allowance was made to appellees out of a fund in which he and they were both interested, he will not be permitted to do so when he has received allowances of the same kind, and has otherwise waived his right to make the specific objection raised for the first time here: *Id.*

ESTOPPEL. See *Errors and Appeals.*

EXECUTOR. See *Legacy.*

Plea of plene administravit—Judgment de bonis propriis.—In an action of debt against an executor founded on a judgment against his testator in his lifetime, where there is a plea of *plene administravit* and no averment of *devastavit* in the *narr*, the judgment should be *de bonis testatoris*, and a judgment *de bonis propriis* will be reversed: *Smith* v. *Chapman*, S. C. U. S., Oct. Term 1876.

Where the jury find against an executor on a plea of *plene administravit*, they must find the amount of assets in his hands before judgment can be entered against him: *Id.*

FORFEITURE. See *Covenant.*

FORMER ADJUDICATION.

Assault and Battery.—In trespass for assault and battery, the defendant gave notice that he sued the plaintiff for the identical assault and battery declared upon, and recovered judgment against him, which he paid. *Held*, no bar: *Cade* v. *McFarland*, 48 Vt.

FRAUDS, STATUTE OF.

Effect of full Payment.—Full payment of the purchase-money for real estate verbally agreed to be conveyed is not of itself sufficient to take the agreement out of the Statute of Frauds. There must also be possession taken of the property: *Temple* v. *Johnson*, 71 Ill.

GUARDIAN.

Profit out of Ward's Estate—Husband and Wife—Husband's Creditors.—A guardian had money of his ward; he placed it in his wife's hands at the instance of his surety to preserve it from his creditors and his own control; she invested it in real estate, and by various transactions realized profit, with which she purchased the property that was

levied on under an execution for a debt of the husband. *Held*, that the money with its profits belonged to the ward, and the accretions could not be seized as the husband's: *Kepler* v. *Davis*, 80 Penna.

Trustees cannot derive advantage from the administration of the trust property: *Id.*

Profit derived from land purchased by a trustee with trust money shall go for the benefit of the *cestui que trust: Id.*

The ownership of a trust fund is unaffected by the change of the custodian, or where it is taken by a volunteer, or one who has notice of the trust: *Id.*

Other moneys came into the wife's hands from the minor sons of the husband, who had relinquished their earnings; the husband took no part in the transactions of the wife: *Held*, that the creditors of the husband could not be benefited by her profit from these moneys: *Id.*

HUSBAND AND WIFE. See *Guardian; Trust.*

Work done on Wife's Real Estate—Liability.—The plaintiff contracted orally with a husband to expend labor upon the real estate of his wife, without mention as to whom the credit was to be given; it was done, in the husband's absence, under the care and to the satisfaction of the wife; he did not deny his liability, but she did hers. *Held*, that they might be regarded as jointly liable. *Verrill* v. *Parker et ux.*, 65 Me.

INJUNCTION. See *Set-off.*

INSURANCE.

Conditions—Variance by Agent.—A policy of life insurance conditioned upon the payment of a given premium upon a day certain, becomes void unless the premium is paid within the time named: *Coombs* v. *Charter Oak Life Ins. Co.*, 65 Me.

In an action upon a life insurance policy, the insured cannot introduce evidence that the agent of the company before or at the time of the negotiation of the insurance agreed to extend the time of payment of premium beyond the time stated in the policy: *Id.*

The plaintiff and wife procured a joint policy on their lives payable to the survivor on the death of either, conditioned that if the semi-annual premium of $13.93 were not paid each six months from April 25th 1873, the policy should cease and determine. The payment of the premium due in October 1873 was not made or tendered till December following. *Held*, 1, the policy became void for non-payment of premium; 2, the plaintiff could not be allowed to introduce evidence "that at the time this insurance was negotiated, the agent of the company assured the plaintiff that he might pay down what money he had, and take the policy, and that he would wait for the balance any time within the year, and take care of him:" *Id.*

JUDGMENT.

Power of Attorney to Confess—Filling Blanks in Warrant.—An attorney confessing judgment against a defendant may be called on to file his warrant, and if it be entirely wanting in a power to appear and confess the judgment, the court to effectuate justice may strike off the judgment: *Sweesey* v. *Kitchen*, 80 Penna.

Setting aside a judgment is a matter of sound discretion on the facts, and the refusal is not the subject of a writ of error: *Id.*

A judgment was confessed by attorney on a note commencing, "I promise to pay," &c., with warrant attached, having unfilled blanks, and signed by defendant, viz.: "And — empower any attorney, &c., to appear for — and confess judgment against —," &c. *Held*, that the warrant was not void, and the attorney properly interpreted the blanks to be intended to be filled with "me": *Id.*

The note being that of defendant with warrant on the same paper, the person was the same as the one named in the note, that is the defendant: *Id.*

In such case, if the interpretation of the blanks be unsound, the defendant will be left to his remedy against the attorney: *Id.*

Landlord and Tenant.

Covenant for Anticipation of Rent.—A lease was for a store-room for two years, for the yearly rent of $2000, with the stipulation that if the lessee should, "at any time during the continuance of this lease attempt to remove or manifest an intention to remove his goods and effects out of or off the premises, without having paid * * * in full for all the rent which shall become due during the term of this lease * * *, the whole rent for the whole term shall be taken to be due * * * and the (lessor) may proceed * * * to distrain and collect the whole as if by the conditions of this lease the whole rent was payable in advance." *Held*, that by the lease it was not required that the attempt or intention to remove the goods should be fraudulent in order to authorize a distress. *Goodwin* v. *Sharkey*, 80 Penna.

The tenant becoming embarrassed sold and delivered goods to his creditors in payment of debts to them and made an assignment for benefit of creditors. *Held*, that the rent for the whole term had become due and the landlord might distrain: *Id.*

The tenant assented to the distress and within four months proceedings in bankruptcy were commenced against him. *Held* not to be in fraud of the Bankrupt Law: *Id.*

Legacy.

An action at law will not lie for a legacy, against the administrator of an executor, where the latter has wasted, or converted to his own use, the assets of his testator; the remedy is by a proceeding in equity: *Coates* v. *Mackie, Admr.*, 43 Md.

Limitations, Statute of. See *Attorney; Partnership.*

Married Woman. See *Trust.*

Master and Servant.

Negligence—Defective Machinery.— The machinery and cars furnished by railroad companies for use, ought not to be so unskilfully constructed that the slightest indiscretion on the part of the operatives would prove fatal; and where they are so constructed, it is such negligence as will render them liable for damages occasioned thereby to an employee who is ignorant of such unskilful construction: *T. W. & W. Railway Co.* v. *Fredericks*, 71 Ill.

Mortgage. See *Chattel Mortgage.*

NUISANCE. See *Damages.*

Obstruction of Street—Extent of Remedy.—When an erection itself constitutes a nuisance as a building in a public street obstructing its safe passage, its removal or obstruction may be necessary for the abatement of such nuisance: *Brightman* v. *Inhabitants of Bristol*, 65 Me.

When the nuisance consists in the wrongful use of a building harmless in itself, the remedy is to stop the use: *Id.*

When the act done or the thing complained of is only a nuisance by reason of its location and not in and of itself, the court will not order the destruction of what constitutes the nuisance, but will require its removal or cause its use, so far as such use is a nuisance, to cease: *Id.*

How abated.—The remedy for abating a public nuisance is by indictment and not by removing it by force, without legal proceedings finding it to be a nuisance of that character; neither the common law nor the statute authorizes individuals to tear down and destroy buildings in which an unlawful business is carried on, nor does either permit the courts, on conviction, to have the buildings destroyed or abated, but the offenders are subject to punishment: *Earp* v. *Lee*, 71 Ills.

OFFICER. See *Assumpsit.*

Authority of Officer de facto.—When one of a board of officers is not legally elected, but is an officer *de facto*, he may legally join in the action of the board with those who are officers *de jure: Dutton* v. *Simmons*, 65 Me.

Thus the mayor and aldermen of Belfast were *ex officio* overseers of the poor; the city clerk who was not the mayor nor an alderman was irregularly elected as an overseer, and chairman of the board, and joined in the action of the board authorizing the supplies to the paupers, and gave the written notices to the defendant town. *Held*, 1. That the city clerk legally joined in the action of the board, and might be counted as one towards constituting a required majority; 2. That his notices to the defendants, and their replies thereto, he having been known and recognised by them as an acting overseer, were legal and binding: *Id.*

PARTNERSHIP.

Promissory Note—Statute of Limitations.—After a partnership was dissolved, a note was given in the partnership name by one of two partners for a pre-existing partnership debt. In an action on the note against the other partner, it was *held:* 1st. That if the debt was barred by limitations at the time the note was given, the defendant would not be liable upon the note, the same having been made without his knowledge or authority. 2d. That the admission or promise of the partner who signed the note, if made without the authority of the defendant, though made within three years before the institution of the suit, could not revive the right of action on the note against the defendant, or deprive him of his defence under the statute; *Newman* v. *McComas*, 43 Md.

Receiver—Effect of a Receiver's Sale of Debts due to a Resident partnership by Non-resident Debtors.—The Circuit Court of Baltimore city in a case to which the members of an insolvent firm were parties, appointed a receiver to take possession of the assets of the firm and

collect the debts due it. By the authority of the court the receiver sold all the assets and property, book debts, choses in action and effects of the firm within the jurisdiction of the court, upon an offer of P. to purchase the entire assets of the firm for a stated sum. The purchaser under this sale collected debts due the firm by non-resident debtors, claiming the same as his by virtue of said sale to him. On a bill for an account of said collections, brought by members of the firm against P., it was *Held:* 1st. That all the right and title of the firm to these debts was virtually divested and passed to P. by the sale, with such power to collect them as could be conferred by the sale of the receiver or the authority of the court. 2d. That if the debts were voluntarily paid, P. was entitled to hold the proceeds without accounting therefor to the complainants. 3d. That if their payment was refused the court had the power to compel the firm—being within its jurisdiction and parties to the proceedings—to whom the debts were due, to assign and transfer all their right and title thereto to P., so as to vest the same in him: *Loney* v. *Penniman*, 43 Md.

Railroad.

Failure to stop for Passenger—Damages.—Where a railroad train wrongfully fails to stop to take on a passenger, he is entitled to recover nominal damages, and such actual damages as he may sustain by reason of the delay, but he has no right to inflict injury on himself to enhance the damages, as by walking to the next station, instead of waiting for the next train, or procuring other conveyance, and thereby causing sickness: *J. B. & W. Railway Co.* v. *Birney*, 71 Ill.

Riparian Owner.

Alluvion.—Right of Owner to Build Wharf, &c.—By the common law, where land lies adjacent or contiguous to a navigable river, in which there is an ebb and flow of the tide, any increase of soil formed by the gradual and imperceptible recession of the waters, or any gain by the gradual and imperceptible formation of what is called alluvion, from the action of the water washing it against the fast land of the shore, and there becoming fixed as part of the land itself, belongs to the proprietor of the adjacent or contiguous land. And the right to accretion, thus formed, is considered as an interest appurtenant to the principal land, and belonging, in the nature of an incident, to the ownership of that, rather than as something acquired by prescription or possession, in the ordinary legal sense of those terms: *Baltimore and Ohio Railroad Co.* v. *Chase*, 43 Md.

And in addition to this right by reliction or accretion, the riparian proprietor, whose land is bounded by a navigable river, whether his title extended beyond the dry land or not, has the right of access to the navigable part of the river from the front of his lot, and the right to make a landing, wharf or pier for his own use, or for the use of the public, subject to such general rules and regulations as the legislature may think proper to prescribe for the protection of the rights of the public, whatever those rights may be. *Id.*

These riparian rights, founded on the common law, are property, and are valuable, and while they must be enjoyed in due subjection to the rights of the public, they cannot be arbitrarily or capriciously destroyed

or impaired. They are rights of which, when once vested, the owner can only be deprived in accordance with the law of the land, and, if necessary that they be taken for public use, upon compensation : *Id.*

But these principles of the common law, governing the rights of the riparian owner, are subject to change and modification by the statute law of the state, and by nature and circumstances of the grant by which the title may have been acquired to the land bounding on the river : *Id.*

SALE.

Implied Warranty—Rescission.—Defendant gave plaintiffs, manufacturers of safes, a written order for a " No. 4 safe with combination lock," and plaintiffs sent a safe answerable to the order. *Held*, that there was no *implied* warranty as to the merits of the lock, but only that it should be such as the order called for : *Tilton Safe Co.* v. *Tisdale*, 48 Vt.

When the right of rescission exists, it must be exercised within a reasonable time, or the property becomes the purchaser's, and he must pay for it according to the contract, subject to the right to recoup such damages as he has sustained by reason of the fraud of the vendor : *Id.*

SET-OFF.

Injury to Articles bought, occasioned by Vendor's Negligence.—In an action for the price of specific articles bargained and sold, but not delivered, defendant may set up, by way of a recoupment, any injury to such articles occasioned by the fault or negligence of the vendor, subsequent to the sale and prior to the time of delivery : *Barrow* v. *Window*, 71 Ill.

Insolvent Plaintiff—Equity.—The insolvency of a party seeking to enforce his judgment, furnishes a sufficient ground for the interposition of a court of equity to enable the debtor to avail himself of a set-off : *Marshall* v. *Cooper*, 43 Md.

Injunction to restrain Execution upon a Judgment—Insolvency of Creditor—Attorney's Lien for his Fee upon a Judgment recovered for his Client.—L., the creditor in a judgment, assigned the same to his wife, who issued execution thereon. The judgment debtor filed a bill for an injunction to restrain the execution on the ground that he had a claim against L. which he was entitled to set-off against the judgment, and alleging that he " is informed and verily believes that the said L. is hopelessly insolvent and was so at the time of said judgment." The injunction issued as prayed. On a motion to dissolve the injunction affidavits were filed by the complainant, stating that L. was indebted to the affiants respectively, that he had been indebted for a long time, that their efforts to make their money had been unavailing, that he had no assets whatever, that they had been informed that others of his creditors had made fruitless efforts to collect their debts from him, and that he was hopelessly insolvent; and they stated that he was insolvent, not from information derived from others, but from their own knowledge. *Held*, 1st. That whether the above allegation in the bill was an allegation of insolvency sufficient to warrant the court in issuing an injunction in the first instance or not, it was certainly sufficient, when supplemented by the proof before the court at the hearing of the motion to dissolve, to warrant the court in continuing it until final hearing.

2d. That L. being insolvent, the complainant had an undoubted right

to go into equity and have his claim set-off against so much of the judgment against him as would be equal to his rightful claim against L.

3d. That the assignee of L stood in no better condition than he stood, and was subject to the same equitable rights which existed against him, whether she was an assignee for a valuable consideration without notice of the appellee's claim or otherwise.

4th. That the attorneys of L could not effectually assert a lien upon the judgment for services rendered in obtaining it: *Levy* v. *Steinbach*, 43 Md.

Shipping.

Charter of Affreightment—Liability of Charterer for value of Vessel destroyed by Fire.—Where a steamer, lying at the time at the wharf at St. Louis, was taken into the service of the United States by a quartermaster of the United States, for a trip to different points on the Mississippi river, the compensation for the service required being stated at the time to the captain, and no objection being made to the service or compensation, and the service was rendered, the possession, command and management of the steamer being retained by its owner: *Held*, that the United States were charterers of the steamer upon a contract of affreightment, and they were not liable under such a contract to the owner for the value of the steamer, though she was destroyed by fire whilst returning from the trip without his fault: *Shaw* v. *The United States*, S. C. U. S., Oct. Term 1876.

Slander.

Failure to prove Justification.—It is error to instruct the jury in an action for slander, that the defence of justification is odious when not sustained by the evidence, and such an instruction cannot but influence the jury against the defendant: *Corbley* v. *Wilson*, 71 Ill.

Specific Performance.

When it will not be Decreed.—Where the contract sought to be enforced is alleged to be one by which the defendant was to take a lease of land, and the proof shows that she contracted for the fee and for no other estate in the property, and authorized no other person to make a different contract for her, the court will not compel her to accept a lease instead of a deed in fee, or give the complainant compensation for the non-performance of the contract: *Ellicott* v. *White*, 43 Md.

Where there is a substantial defect with respect to the nature, character, situation, extent or quality of the estate, which is unknown to the vendee, and in regard to which he is not put upon inquiry, a specific performance will not be decreed: *Id.*

Supreme Court of the United States.

Jurisdiction—Amount in Controversy.—A fund being in court for distribution among the creditors of an insolvent bank, a claim by A. to the amount of $6000 was allowed. To this B., another claimant, excepted, and the exception being overruled B. appealed to this court. It appearing that if the claim of A. were disallowed the amount of additional dividend that would come to B. would be less than $2000, the appeal was dismissed: *Terry* v. *Bank of Commerce*, S C. U. S. Oct. Term 1876.

Time. See *Covenant.*

TRESPASS. See *Damages.*

TRUST. See *Guardian.*

Separate use of Married Woman.—A testator gave to a daughter one-third of the residue of his estate, "for her sole and separate use, and so that her husband shall not have any control over or use of the same, her heirs and assigns for ever." The husband being alive, *Held*, that this created a trust to preserve the estate for her separate use, so that its control could not be exercised by the husband: *Varner's Appeal*, 80 Penna.

No trustee being named in the will, equity would raise a trustee, to effectuate the testator's intention: *Id.*

In distributing the estate it was the duty of the Orphans' Court to preserve the use by ordering that the fund should not be paid to the legatee, thereby enabling her to dispose of it contrary to the trust: *Id.*

Compensation.—A trustee can make no profit out of his office, for the reason that he shall not be placed in any position where his interest may be opposed to his duty. And this rule that one occupying the position of trustee can have no allowance or compensation for his time and trouble in the execution of the trust, applies not only to trustees, strictly so called, but to all who hold a fiduciary relation, as executors, administrators, mortgagees, receivers, guardians and officers, directors and trustees of corporations: *Hough* v. *Harvey*, 71 Ill.

Negligence in selecting Insurance.—Where a deed of trust gives the trustee full power to select the company or companies in which to insure the trust property, he will be required to exercise due care in the selection of good and solvent companies, but he will not be a guarantor of their solvency: *Gettins* v. *Scudder*, 71 Ill.

WATERS AND WATERCOURSES. See *Riparian Owner.*

Riparian Owner—Extent of Title—Alluvion.—In the location of a body of land for the benefit of soldiers the Commonwealth reserved 3000 acres on the east and north of the Ohio and Allegheny rivers, and directed it to be laid out in lots for a town (afterwards Allegheny City); some of the lots abutted on the north side of a street called Bank lane, "as it runs by the courses of the river:" *Held*, that the title of the lot-owners to the soil did not cross the street to the river: *Allegheny City* v. *Moorehead*, 80 Penna.

The interest of the lot-owners south of the north line of the street was but an easement in common with all others in the use of the street, which was bounded by the water line: *Id.*

The water highway began at the water line and the public right was such only as could be claimed by all for navigation and other purposes: *Id.*

The street was widened by deposits by the owners of the lots and the city and was widened by the city to a defined width; this was not an accretion by gradual deposits or an enlargement by dereliction of the water: *Id.*

The channel between the island and Allegheny City became so filled as to be useless as a highway, unless in high water; the land lying between the natural low-water line of the island and Bank lane belonged to the Commonwealth: *Id.*